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BEFORE THE
PHYSICIAN ASSISTANT COMMITTEE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation)	File No: 1E-2001-124712
Against:)	
)	OAH No: L2003010640
JOSEPH HENDRICK FORTUNE, P.A.)	
)	
)	
Physician Assistant)	
License No. PA-14012)	
)	
)	
<u>Respondent.</u>)	

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby accepted and adopted as the Decision and Order by the Physician Assistant Committee of the Medical Board of California, Department of Consumer Affairs, State of California.

This Decision shall become effective at 5:00 p.m. on October 27, 2003.

DATED September 25, 2003

PHYSICIAN ASSISTANT COMMITTEE


Robert Sachs, P.A.
Chair

BEFORE THE
PHYSICIAN ASSISTANT COMMITTEE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:	Case No. 1E2001-124712
JOSEPH HENDRICK FORTUNE,	OAH No. L2003010640
Respondent.	

PROPOSED DECISION

On August 4, 2003 Administrative Law Judge Timothy S. Thomas, Office of Administrative Hearings, heard this matter in Los Angeles, California.

Vladimir Shalkevich, Deputy Attorney General, represented Richard L. Wallinder, Jr. (hereinafter complainant).

Joseph Hendrick Fortune (hereinafter respondent) represented himself.

The matter was submitted on August 4, 2003.

FACTUAL FINDINGS

1. Complainant filed the Accusation in his official capacity as the Executive Officer of the Physician Assistant Committee of the Medical Board of California (hereinafter the board).

2. Respondent received education and training as a nurse in his native country of Guyana, South America. Respondent came to this country in 1980 and became licensed as a Registered Nurse here in 1983. On January 22, 1997 the board issued Physician Assistant License No. PA 14012 to respondent. He has worked at Martin Luther King/Drew, Los Angeles County Medical Center in the trauma center for five years. Due to the pending disciplinary matter, the County suspended respondent's privileges to see patients. Since February 2003 his duties have been limited to the review of charts.

3. On October 6, 1989 respondent was convicted on his plea of guilty of violating Vehicle Code sections 14601.1, driving upon a highway at a time when his driving privilege was suspended, a misdemeanor. Respondent was fined \$705 and ordered to perform 141 hours of community service.¹ Respondent explains that he was providing home care as a nurse and driving 250 miles daily. His license had expired and he had failed to renew it. On April 24, 1990 a bench warrant was issued for respondent's arrest for failure to pay the fine. Respondent was arrested and spent five days in jail leading up to a court hearing in which he was found to have violated probation. Probation was extended another two years, and respondent was ordered to serve an additional five days in jail. He did not pay the fine or do the community service.

4. It was not established that the 1989 conviction is substantially related to the qualifications, functions or duties of a licensed physician's assistant.

5. In 1994 respondent's wife had an affair with another man and left him and their three children. Divorce proceedings were instituted. Respondent loaned his car to his wife sometime in March 1995. When she refused to return it, respondent, on March 22, 1995, waited for his wife in the carport area of her apartment building, and when she came out to get into the car respondent demanded the car keys. When she refused to turn over the keys to him, respondent forcibly pried the keys from her hand. Respondent held her arm and hand with both of his hands, and twisted her arm until she complained of pain. She eventually surrendered the car keys. Meanwhile, the wife's boyfriend witnessed the scene and called the police. Respondent waited for the police to arrive and was arrested. Respondent resisted arrest by pulling away and holding his arms stiffly at his sides with his hands in his pockets so that he could not be handcuffed without the police officers applying some degree of force.

6. Respondent was charged with violating Penal Code sections 273.5, spousal battery, and 242, battery. He was arraigned in Inglewood Municipal Court on March 24, 1995, pleaded not guilty and was remanded back into custody. On April 3, 1995 respondent pleaded guilty to violating Penal Code 242, and the spousal battery charge was dismissed. Given credit for time served, respondent was released on one year's probation and fined \$270. However, respondent failed to pay the fine and a bench warrant was issued. Respondent was arrested, jailed for two days and brought before the sentencing judge on August 17, 2000. Respondent's probation was modified to substitute the two days in jail in lieu of payment of the fine, and probation was terminated.

7. It was not established that the conviction for battery, under the circumstances of this particular case, is substantially related to the qualifications, functions or duties of a licensed physician's assistant. It was not established that the

¹ Respondent was also convicted of a violation of Vehicle Code section 22450, running a stop sign, and was sentenced to attend traffic school.

eight-year-old conviction represents a present or potential unfitness to practice as a physician's assistant.

8. In his application for licensure as a physician's assistant that was submitted to the board on October 24, 1996, respondent represented, under penalty of perjury, that he had never been convicted of any offense, misdemeanor or felony. The question that was answered by respondent in the negative was followed in the application by the statement, in upper case type: "You are required to list all convictions regardless of the sentence (jail time, community service, probation, etc.), including any conviction that has been set aside and dismissed under section 1203.4 of the Penal Code." Respondent's native language is English.

9. Respondent works full-time and is the sole support for his three children, ages 16, 15 and 12. In addition, he has one of the children in private school and home-schools the other two. Respondent is an elder and a youth leader in his church. He has experienced no problems in his work at Martin Luther King in his five years there, and there is no evidence of a prior history of discipline as a physician's assistant or an RN.

10. The conduct underlying the convictions was not particularly egregious, and respondent spent more time in custody than one might expect. Moreover, the convictions are eight and 14 years old at this point and standing alone would likely not provide sufficient grounds for discipline. However, his performance in both probationary programs was very poor, and respondent's failure to disclose the convictions in his application is equally troublesome. His explanation for the omission is that he only saw the word "felony" and did not appreciate that his convictions should be disclosed. He thought the 1989 conviction was a minor traffic matter only.

11. Respondent expresses remorse for the conduct leading to his convictions, and accepts responsibility for the misrepresentation in his application. He states that he understands the board's concerns and "the extent of my guilt." Respondent appears sincere and genuine. He has no history of alcohol or drug abuse, and is to be congratulated for fulfilling the difficult responsibilities as a single father of three teens. On balance, the failure to include the misdemeanor convictions in his application and the factors in aggravation² are sufficiently outweighed by the factors in mitigation and the lack of any evidence that any patient is likely to be at risk in respondent's care. It is appropriate that respondent's license be placed on probation as a reminder to him that any further dishonest act or conduct that may bring his good character into further question will result in more serious professional consequences.

² As it is the finding herein that the convictions are not substantially related to the qualifications, functions or duties of the licensed profession, the conduct underlying the convictions and respondent's performance on probation are considered factors in aggravation in this analysis.

12. The board reasonably incurred costs of investigation in the amount of \$2,244.51, and costs of prosecution in the amount of \$2,860.

LEGAL CONCLUSIONS

1. Cause does not exist to discipline respondent's license pursuant to Business and Professions Code section 3531 or Title 16 California Code of Regulations section 1399.525, in that it was not established that the conviction for driving on a suspended license is substantially related to the qualifications, functions or duties of the licensed activity, based on Factual Findings 3 and 4.

2. Cause does not exist to discipline respondent's license pursuant to Business and Professions Code section 3531 or Title 16 California Code of Regulations section 1399.525, in that it was not established that the conviction for battery, to a substantial degree, evidences a present or potential unfitness to perform the functions authorized by the license, based on Factual Findings 5, 6 and 7.

3. Cause exists to discipline respondent's license pursuant to Business and Professions Code section 475(a)(1), in that he knowingly omitted to state a material fact in an application for a license, based on Factual Findings 3, 6 and 8.

ORDER

Physician Assistant License No. PA 14012 issued to respondent Joseph Hendrick Fortune, is hereby revoked pursuant to Legal Conclusion 3. However, revocation is stayed and respondent is placed on probation for five (5) years upon the following terms and conditions.

1. Respondent shall obey all federal, state and local laws, and all rules governing the practice of medicine in California.

2. Respondent shall perform 96 hours of community service within the first year of probation, and shall submit a proposal for fulfilling this requirement to the board within 30 days of the effective date of this Decision.

3. Respondent shall enroll in and complete a course in ethics approved by the board within the first year of probation.

4. Respondent shall enroll in an anger management program approved by the board within the first year of probation. The program shall be completed within the first two years of probation.

5. Respondent shall provide his employer with a copy of this Decision within 30 days of the effective date of this Decision. Should respondent change employment, he shall provide a copy of this Decision to each new employer within 30 days of the start of his employment.

6. Respondent shall submit quarterly declarations under penalty of perjury on forms provided by the board, apprising the board of his progress with the requirements of probation and stating whether there has been compliance with all the conditions of probation.

7. Respondent shall appear in person for interviews with the board, its designee or its designated physician(s) upon request at various intervals and with reasonable notice.

8. Respondent shall at all times keep the board informed of his address of business and residence. Changes of either address shall be immediately communicated in writing to the board. Under no circumstances shall a post office box serve as an address of record, except as allowed by Business and Professions Code section 2021(b).

9. Respondent shall at all times maintain a current and renewed physician assistant's license.

10. Respondent shall immediately inform the board in writing of any travel to any areas outside the jurisdiction of California which lasts, or is contemplated to last, more than 30 days.

In the event respondent should leave California to reside or to practice outside the State of California or for any reason should respondent stop practicing in California, respondent shall notify the board or its designee in writing within ten days of the dates of departure and return or the dates of non-practice within California. Periods of temporary or permanent residence or practice outside of California or of non-practice within California, as defined in this condition, will not apply to the reduction of the probationary order.

11. If respondent violates probation in any respect, the board, after giving respondent notice and the opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If an accusation or petition to revoke probation is filed against respondent during probation, the board shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final.

12. The respondent is hereby ordered to reimburse the board the amount of \$5,104.51 for its investigative and enforcement costs according to an installment plan approved by the board. Failure to reimburse the board's cost of investigation and

enforcement shall constitute a violation of the probation order. The filing of bankruptcy by the respondent shall not relieve the respondent of his responsibility to reimburse the board for its costs.

13. Following the effective date of this decision, if respondent ceases practicing due to retirement, health reasons or is otherwise unable to satisfy the terms and conditions of probation, respondent may voluntarily tender his certificate to the board. The board reserves the right to evaluate the respondent's request and to exercise its discretion whether to grant the request, or to take other action deemed appropriate and reasonable under the circumstances. Upon formal acceptance of the tendered license, respondent will no longer be subject to the terms and conditions of probation.

14. Respondent shall pay the costs associated with probation monitoring each and every year of probation. The board shall annually advise respondent of the amount of the costs, which shall be payable to the board and delivered to the designated probation surveillance monitor no later than January 31 of each year. Failure to pay costs within 30 days of the due date shall constitute a violation of probation.

15. Upon successful completion of probation, respondent's certificate shall be fully restored.

DATED: August 27, 2003



TIMOTHY S. THOMAS
Administrative Law Judge
Office of Administrative Hearings